U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

Public Copy

FILE: [redacted] Office: Vermont Service Center Date: JAN 21 2000

EAC 99 096 52761

IN RE: Petitioner: [redacted]
Beneficiary:

APPLICATION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. 1154(a)(1)(A)(iii)

IN BEHALF OF PETITIONER:

[redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

for

Terrance M. O'Reilly, Director
Administrative Appeals Office

[redacted]

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of Sweden who is seeking classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1154(a)(1)(A)(iii), as the battered spouse of a United States citizen.

The director determined that the petitioner failed to establish that she: (1) has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; and (2) is a person whose deportation (removal) would result in extreme hardship to herself, or to her child. The director, therefore, denied the petition.

On appeal, counsel asserts that the Service erroneously determined that the petitioner had not been battered or the subject of extreme cruelty perpetrated by her citizen spouse during the marriage, and that she would not be subject to extreme hardship if removed to Sweden. Counsel submits additional evidence.

8 C.F.R. 204.2(c)(1) states, in pertinent part, that:

> (i) A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:
>
> > (A) Is the spouse of a citizen or lawful permanent resident of the United States;
> >
> > (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;
> >
> > (C) Is residing in the United States;
> >
> > (D) Has resided in the United States with the citizen or lawful permanent resident spouse;
> >
> > (E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject

[redacted]

> of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;
>
> (F) Is a person of good moral character;
>
> (G) Is a person whose deportation (removal) would result in extreme hardship to himself, herself, or his or her child; and
>
> (H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

The record reflects that the petitioner last arrived in the United States on March 12, 1998 as a visitor under the Visa Waiver Pilot Program. The petitioner married her United States citizen spouse on February 17, 1998, at Kansas City, Missouri. On January 25, 1999, a self-petition was filed by the petitioner claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her U.S. citizen spouse during their marriage.

8 C.F.R. 204.2(c)(1)(i)(E) requires the petitioner to establish that she has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage.

The qualifying abuse must have been sufficiently aggravated to have reached the level of "battery or extreme cruelty." 8 C.F.R. 204.2(c)(1)(vi) provides:

> [T]he phrase, "was battered by or was the subject of extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen or lawful permanent resident spouse, must have been perpetrated against the self-petitioner or the self-petitioner's child, and must have taken place during the self-petitioner's marriage to the abuser.

8 C.F.R. 204.2(c)(2) provides, in part:

> (i) Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.
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> * * *
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> (iv) Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuse may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

The director, in his decision, reviewed and discussed the evidence furnished by the petitioner to establish that she qualifies for the benefit sought. He indicated that in reading the petitioner's self-affidavit and the protection order, it appears that what has occurred was a bad marriage, that problems arose between the petitioner and her spouse almost immediately, that the protection order was a mutual protection order issued to both the petitioner and her spouse, the issue was ordered until such time (December 15, 1998) that one of them can vacate the premises, and that the protection order did not extend beyond that date, indicating that the court did not perceive any need for ongoing protection.

On appeal, counsel argues that the petitioner, on several occasions, was the victim of physical violence, she received physical injuries and required medical treatment at [redacted]. Counsel further argues that as a result, the petitioner was forced to leave the home and seek refuge in a shelter for battered women, and with the assistance of volunteers from the shelter, she was able to obtain an order of protection from her spouse. Counsel states that this order specifically prohibits the spouse from beating or abusing the petitioner and is in effect through December 1, 1999. Counsel further states that

the petitioner's spouse was criminally charged by the Kansas City Police with assaulting the petitioner. He pled guilty to the charge, thus admitting he assaulted and battered the petitioner, and he was placed on probation. Counsel submits a copy of the conviction record.

Counsel further argues that in addition to the physical violence, the petitioner was subjected to extreme mental cruelty, her spouse would awaken her at night and interrogate her about her past, he attempted to tape record her answers, he would spend countless hours in front of the computer, barely acknowledging the petitioner's presence, he forbade her from leaving the house, and in short, the petitioner was treated like a prisoner.

The record of proceeding contains the Order of Protection effective until December 1, 1999; the November 30, 1998 Kansas City police report regarding the abuse; the December 30, 1998 letter from SafeHaven Women's Center; records of abuse dated December 7 and December 9, 1988 from the U.S. Military Base in [redacted] the petitioner's statement and a statement from the petitioner's daughter discussing the physical and mental abuse perpetrated by the petitioner's spouse during the marriage.

As provided in 8 C.F.R. 204.2(c)(2), the Service will consider any credible evidence relevant to the petition. While the petitioner furnished documentation to support her claim of abuse, documentary proof of non-qualifying abuse may be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred. Furthermore, a self-petitioner who has suffered no physical abuse is not precluded from a finding of eligibility for the benefit sought. As defined in 8 C.F.R. 204.2(c)(1)(vi), the phrase, "was battered by or was the subject of extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury.

Based on the evidence in the record, it is concluded that the petitioner has furnished sufficient and credible evidence that she was the subject of extreme cruelty perpetrated by her spouse. The petitioner has overcome this finding of the director pursuant to 8 C.F.R. 204.2(c)(1)(i)(E).

8 C.F.R. 204.2(c)(1)(i)(G) requires the petitioner to establish that her removal would result in extreme hardship to herself or to her child. 8 C.F.R. 204.2(c)(1)(viii) provides:

> The Service will consider all credible evidence of extreme hardship submitted with a self-petition, including evidence of hardship arising from circumstances surrounding the abuse. The extreme hardship claim will be evaluated on a case-by-case basis after a review of

> the evidence in the case. Self-petitioners are encouraged to cite and document all applicable factors, since there is no guarantee that a particular reason or reasons will result in a finding that deportation (removal) would cause extreme hardship. Hardship to persons other than the self-petitioner or the self-petitioner's child cannot be considered in determining whether a self-petitioning spouse's deportation (removal) would cause extreme hardship.

The director, in his decision, reviewed and discussed the evidence furnished by the petitioner, including her self-affidavit. The discussion will not be repeated here. Because the record did not contain satisfactory evidence to demonstrate that the petitioner's removal would result in extreme hardship, the director denied the petition.

Readjustment to life in the native country after having spent a number of years in the United States is not the type of hardship that has been characterized as extreme, since most aliens who have spent time abroad suffer this kind of hardship. See Matter of Uy, 11 I&N Dec. 159 (BIA 1995). To establish extreme hardship, the petitioner must demonstrate more than the existence of mere hardship because of family separation or financial difficulties. See Matter of Ngai, 19 I&N Dec. 245 (Comm. 1984), citing Matter of Shaughnessy, 12 I&N Dec. 810 (BIA 1968), and Matter of W-, 9 I&N Dec. 1 (BIA 1960). Further, economic detriment alone is insufficient to support a finding of extreme hardship within the meaning of section 240A of the Act. See Palmer v. INS, 4 F.3d 482, 488 (7th Cir. 1993); Mejia-Carillo v. United States INS, 656 F.2d 520, 522 (9th Cir. 1981). Moreover, the loss of current employment, the inability to maintain one's present standard of living or to pursue a chosen profession, separation from a family member, or cultural readjustment do not rise to the level of extreme hardship. See Matter of Ige, 20 I&N Dec. 880, 882 (BIA 1994); Lee v. INS, 550 F.2d 554 (9th Cir. 1977).

On appeal, counsel asserts that the petitioner's spouse used and deceived the petitioner, and he will have the last laugh if she is removed to Sweden. He further asserts that the petitioner has absolutely nothing to return to in Sweden, she does not have a place to live, she does not have a job, she is 54 years old and is virtually unemployable at her age. Counsel states that returning to Sweden will crush the petitioner's psyche, she is a battered woman who is just now able to take control of her life, returning to Sweden will be an acknowledgment that her spouse has won, she would be forced to lie with that memory and the memories of the hell she endured with her spouse for the rest of her life, and that this would certainly be an extreme hardship to her.

There is no evidence in the record that the petitioner would suffer psychologically if she were removed, that her medical or psychiatric needs cannot be met in Sweden, and that her presence in the United States is vital to her medical and psychological needs.

While it is noted in the record that the petitioner's daughter resides in the United States, she claims in her self-affidavit that she has two sons residing in Sweden. No evidence has been furnished to establish that she would not receive support from her family there. Further, while counsel claims that it would be impossible for the petitioner, at her age, to find work in the Sweden, no evidence is furnished to establish that there is an age limit for employment in Sweden.

As noted above, the mere loss of a job and the resulting financial loss, the inability to maintain one's present standard of living or to pursue a chosen profession, separation from a family member, or cultural readjustment do not constitute extreme hardship. Further, emotional hardship caused by severing family and community ties is a common result of deportation. See Matter of Pilch, Int. Dec. 3298 (BIA 1996). Furthermore, there is no evidence that the petitioner is employed in the United States and that she needs to continue employment if she were to return to Sweden. Nor is there evidence to indicate that the petitioner would be unable to pursue her occupation or comparable employment upon her return to her native country.

The record lists no other equities which might weigh in the petitioner's favor. Even applying a flexible approach to extreme hardship, the facts presented in this proceeding, when weighed in the aggregate, do not demonstrate that the petitioner's removal would result in extreme hardship to herself.

While counsel, on appeal, asserts that the Service failed to properly review the evidence submitted by the petitioner, the record reflects that after reviewing the record of proceeding, the director determined that the petitioner furnished insufficient evidence to establish that her removal would result in extreme hardship. On appeal, the petitioner has failed to overcome this finding of the director pursuant to 8 C.F.R. 204.2(c)(1)(i)(G).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.